From: Kay Schenk
To: Microsoft ATR
Date: 1/12/02 12:31am
Subject: Micsrosoft Settlement

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Kay Schenk, MizK

"The probability that we may fail in the struggle ought
not to deter us from the support of a cause we
believe to be just."
-- Abraham Lincoln

I would like to take this opportunity to thank the judges and counsel involved in the Microsoft antitrust case, #98-1232, for allowing public comment on your final decision. I'm sure by now you have received many responses from interested citizens like myself.

I hold a master's degree in Computer Science which I obtained in 1976. I've worked continually with computers since that time. My occupational setting has been primarily with academic institutions where I have been involved in many different roles since 1976: as computing support personnel, as a programmer, and in my current title as Web Master for the two main web sites at California State University, Chico. Needless to say, I have lived through more changes in the computer industry than I can even remember at this point.

I have attempted to follow this particular antitrust against Microsoft for several reasons not the least is my current involvement in Web development, where the "browser" software of course is an integral component. However, what I find really interesting is that it was this particular piece of software apparently caused this complaint to be filed. (I don't really define this as "middleware" since that term carries a very different connotation to me.) In my mind, many of Microsoft's business practices, this being just one of many, have certainly been worthy of this type of complaint. But I digress.

I read with interest the "Competitive Impact Statement" that was posted to the DOJ Web site around mid_November, 2001. What I found particularly interesting was this statement:

> Appropriate injunctive relief in an antitrust case should: (1) end the unlawful conduct; (2)"avoid a recurrence of the violation"; and, (3) undo its anti-competitive consequences.

Additionally, you state that:

> Restoring competition is the "key to the whole question of antitrust remedy".

You then go on in this same paragraph (section IV.B. of the "Competitive Impact Statement") to describe how Microsoft's illegal conduct maintained the application barrier to entry in the personal computer operating systems market by its practice with the particular middleware product, its Internet Explorer browser.

Unfortunately, in my mind anyway, this is only one very small instance of the type of practices carried out by Microsoft for years to thwart any and all development not only in the PC operating systems market but the PC applications market as well. And, I don't feel your proposed Final Judgment will fulfill the any of the goals of "injunctive relief" at all in the long run. Much more has gone on in the computer industry since this complaint was filed in 1998, and I can tell you with absolutely certainty, that many more anticompetitive moves and harmful monopolistic practices have been carried out by Microsoft in these last five years. Some, even, have severely compromised the entire Internet.

The initial complaint contains 129 paragraphs of description. They seem to provide a good overview of Microsoft's former practices with OEMs with respect to the installation of the Windows operating system and severe restrictions placed on these OEMs concerning the installation of other, many better, non-Microsoft products. Frankly, I don't see the current case so much as directly realting to the browser product, as the incredible amount of market share Microsoft amassed from say 1990-1998 because of these practices and others.

Because Microsoft controls the PC operating systems market, it found a way to convince your office for one, that certain features it "incorporated" into more recent versions of its operating system, Windows 95, for example, were really part and parcel of the OS, and not just unnecessary elements it

decided to include to increase its share in other markets. Incorporating Internet Explorer directly into Windows 95, and not easily removed, was just one such tactic. At about the same time, Microsoft made significant strides, fully aware of the Internet's expansion about that time, to include "monitoring" pieces, if you will, into the Windows 95 operating system to basically track users without their knowledge. Many of these "features" were well publicized on the Internet when discovered and ways were found to disable them much to Microsoft's chagrin, I dare say. I'm sure you must be aware of a letter to President Clinton by Ralph Nader on July 26, 1995 concerning some of this.

In reality, something like browser "middleware" is not even remotely required by an operating system, whose only function really is to provide a means to address the memory available and devices attached to your machine, and load some modicum of software processing power into memory to enable you to program your computer. Anything else on top of this primary function, I classify as "utilities" or "user interfaces" or "software applications". Browsers, as an entity, do not really pose any threats from a competitive standpoint to operating systems in my mind. If this is Microsoft's excuse for their conduct, I stand dumbfounded.

The Final Judgment certainly is a step forward in curtailing Microsoft's current unethical practices, but it certainly does not mitigate, in any way, prior grievances not does it prevent the kind of development practices that have basically enabled Microsoft to totally dominate the PC OS market to begin with.

The biggest positive of this Judgment in my opinion is the requirement that Microsoft provide its Apis and Communications Protocol specifications to developers and and OEMS (sections III.D. and III.E.) Although this requirement does not "open up" what Microsoft considers its operating system, it will at least hopefully provide the development community at large much needed information on how others can provide comparable "middleware" products.

However, even this requirement comes with a loophole that the Justice department will no doubt find difficult to challenge if one were to believe Microsoft. Section III.J.1. states that Microsoft is not obligated to provide APIA information which it feels "would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, ..." I would guess given our current Internet computing environment, that Microsoft might claim that major portions of its Windows OS might fall into this umbrella definition. The upshot of such a loophole will be that Microsoft will continue to capitalize on its monopoly power and reveal very little that will directly benefit additional developers. Microsoft has attained much of its OS monopoly power by developing its own applications, which just coincidentally work best with its own OS. This is no accident. It is absolutely because Microsoft has refused to disclose certain details of the Windows internals to the development community at large.

The appointment of a Technical Committee (detailed in Section IV. Compliance and Enforcement Procedures) seems to be a great requirement at first look. However, I question the politeness of allowing Microsoft to be involved at all in choosing these individuals. This is nonsense.

I also highly object to the restrictions placed on the TC members in terms of public access and accountability to the public. This antitrust suit presumably serves the public interest! And only that. The only communication from the public at large that I can decipher from the Judgment is item IV.B.8.d.:

> "The ETC shall complaints from the Compliance Officer, third parties, or the Plaintiffs and handle them in the manner specified in section IV.D. below".

I guess I would have to ask: what third parties? Who do I complain to as a private citizen? My state attorney general? Additionally, nowhere in this

Judgment is there a mechanism for even informing the public who these TC members are. This is the Internet age. Given th enormous public exposure of this case with nearly all pertaining information posted to the DOJ Web site that this rather critical follow-up is completely shrouded in privacy.

In this regard, I find items IV.B.9 and IV.B.10 especially of concern. I don't think Microsoft should have the opportunity to govern how the implementation of this part of the Judgment is implemented. And this is what seems to be taking place
in the description of these two points.

Additionally, I find the payment of the TC by Microsoft troublesome without further details. Why wouldn't an escrow account to which Microsoft contributes a fixed annual amount simply be established based on cost estimates? It seems incredibly unwise for Microsoft to be directly in charge of paying the TC. Again, it is difficult to determine actual implementation details based on what you've published.

These are specific issues I have with the Final Judgment as it is currently written. However, like many, I feel this Judgment is woefully inadequate in addressing the "larger" issues of Microsoft's business practices, which are integrally tied to its monopolistic position.

Microsoft's unethical business practices are a direct result of its monopoly power
and the desire to ensure that the proprietary APIs on which much of the Windows environment has been built would be used as definitive "standards" in nearly every
aspect of computing--from the desktop to the Internet. To this end, Microsoft has attempted to thwart nearly every aspect of "open standards" that have existed for years. As early as 1995, Microsoft seemed to head a coalition of other vendors in opposing the "interoperability" specifications of HR 1555, the communications bill which provided, in part, the V-chip mechanism.

More recently, in its OS distributions, Microsoft has badly implemented the core protocol used by the Internet, tcp/ip, thereby setting up a scenario leading to denial of service attacks on Windows/NT systems, one of which belonged to the U.S. Navy. While this might be attributed to innocent error, many of the Internet community believe such lack of quality testing is solely attributed to Microsoft's monopoly power and a basic "we don't have to care" attitude.

Microsoft's security problems are so well-known they are documented in literally thousands of sites on the Internet. This scenario wouldn't be quite so fearsome if Microsoft only sold products to businesses who, hopefully, would have the technical expertise to deal with them. But this is not the case in our current society where, according to a U.S. Census report in August, 2000, 42% of households had Internet access. Many of these consumers have very little awareness, much less actual knowledge, of computer security problems and what they could ultimately mean. More sophisticated hacking techniques like distributed denial of service attacks, coupled with total lack of prevention or precaution by household computer users, spells enormous problems! Microsoft is not only a key player in this problem, but, according to nearly every reliable source dealing with computer security issues, THE key player. The reason why is simple--they're a monopoly, they don't have to care.

Microsoft itself is now so concerned about its reputation in this area that it has publicized that "white hat" hackers who expose these problems only add to the problem. This is ludicrous! Is it not the vendor's responsibility to fully test such products under many adverse conditions to determine worthiness. Apparently not for Microsoft, who, in its zeal to rush products to market, has not taken the time, or can't be concerned enough to take the time! More recently, according to a post to a well-know British web site on 12/13/2001, Microsoft continues its highly debatable business practices by essentially "bribing" security by offering them upwards of approximately $30,000 worth of software for $1,450:

"All you have to do is keep silent about any Microsoft security bugs you might discover, until Redmond authorizes you to speak.

Oh, and you have to employ at least two exclusive Microsoft Certified Professionals, such as MCSEs."

The story gets better but I'll spare you the details.

My point in all this is simple. Microsoft has employed unethical business practices from its inception. It continues these practices even I write this. This Final Judgment will not stop those practices. There are too many loopholes and the implementation, however well-intentioned, is fraught with problems. Microsoft is a monopoly and as such operates the way most monopolies do with little concern for quality, customer satisfaction, or long-term innovation. They exist to conquer competition in any way possible including but not limited to marketing products of exceptionally poor quality with the expectation that the consumer will just buy into it because it's the only game in town.

The main function of any antitrust remedy in my mind is to protect the consumer. Your other goals are worthwhile but not really the main point. Your Final Judgment does little really to protect the consumer and in fact, denies the consumer access to intricacies of the Judgment itself. The best outcome of this case would be to divide Microsoft up into individual entities presumably an operating systems division, an applications division, and a networking division, so at least, the hope anyway, the new divisions would at least be on equal footing with competitors and Microsoft might be prevented from deceiving consumers into believing all that is not really an operating system, is.

Thank you for your consideration of this response.